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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/614,775	07/07/2003	Richard C. Allen	52320US018 8028		
32692	32692 7590 04/05/2005		EXAMINER		
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427			SHAFER,	SHAFER, RICKY D	
	ST. PAUL, MN 55133-3427		ART UNIT	PAPER NUMBER	
		2872			
			DATE MAILED: 04/05/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)			
Office Antique O		10/614,775	ALLEN ET AL			
	Office Action Summary	Examiner	Art Unit			
		Ricky D. Shafer	2872			
Period fo	The MAILING DATE of this communication app or Reply	ears on the cover sheet with the o	orrespondence address			
THE I - Exter after - If the - If NO - Failu Any	ORTENED STATUTORY PERIOD FOR REPLY MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a reply operiod for reply is specified above, the maximum statutory period we re to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a reply be ting within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).			
Status						
1)⊠	Responsive to communication(s) filed on 11 Ja	nuary 1005.				
-	This action is <b>FINAL</b> . 2b) This action is non-final.					
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Dispositi	on of Claims					
5)□ 6)⊠ 7)□	Claim(s) <u>59 and 63</u> is/are pending in the applic 4a) Of the above claim(s) is/are withdray Claim(s) is/are allowed. Claim(s) <u>59 and 63</u> is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and/or	vn from consideration.				
Applicati	ion Papers					
10)⊠	The specification is objected to by the Examine The drawing(s) filed on <u>07 July 2003</u> is/are: a)[ Applicant may not request that any objection to the Replacement drawing sheet(s) including the correction of the oath or declaration is objected to by the Ex	☐ accepted or b) ☐ objected to be drawing(s) be held in abeyance. See ion is required if the drawing(s) is ob	e 37 CFR 1.85(a). jected to. See 37 CFR 1.121(d).			
Priority u	under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.						
2) Notice	t(s)  e of References Cited (PTO-892)  e of Draftsperson's Patent Drawing Review (PTO-948)  mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  or No(s)/Mail Date 06/04/04 &12/01/04.	4) Interview Summary Paper No(s)/Mail D 5) Notice of Informal F 6) Other:				

## **DETAILED ACTION**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 59 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Ikeda et al ('904).

Ikeda et al a body comprising an open-celled polymeric first phase (20), wherein the polymeric material of the first phase is selected from a list of materials (see column 4, lines 19 to 43); and a second phase (21) disposed within the cells of said first phase; wherein the filler material of the second phase is selected from a list of materials (see column 5, lines 5 to 14), note Fig. 1 along with the associated description thereof, wherein the absolute value of the difference between  $\Delta$ nl and  $\Delta$ n2 is at least about 0.05, when the material selected for the first phase is for example polyethylene and the material selected for the second phase is for example nylon or titanium dioxide.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 4. Claims 59 and 63 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30 and 31 of U.S. Patent No. 6,590,705.

  Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application (10/614,775) discloses no additional invention or discovery other than what was already claimed and patented in U.S. Patent 6,590,705 or what would have been obvious to one of ordinary skill in the art at the time the invention was made.
- U.S. Patent 6,590,705 discloses a polarizer comprising an open-celled polymeric first phase; and a second phase disposed within the cells of said first phase; wherein the absolute value of the difference in index of refraction of said first and second phases is  $\Delta n1$  along a first axis and  $\Delta n2$  along a second axis orthogonal to said first axis, and wherein the absolute value of the difference between  $\Delta n1$  and  $\Delta n2$  is at least about 0.05 (See claim 30) or at least about 0.1 (See claim 31).
- 5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the open celled polymeric first phase

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and the second phase being disposed within the cells of the first phase must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The Examiner has considered all of the references submitted as part of the Information Disclosure Statements, but has not found any to be particularly relevant. If Applicant is aware of pertinent material in the references, he should so state in a response to this Office action.

Applicant is reminded of section 2004, paragraph 13, of the MPEP.

It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to applicant's attention and/or are known to be of most significance. See Penn Yan Boats,

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Inc. v. Sea Lark Boats, Inc., 359 F. Supp. 948, 175 USPQ 260 (S.D. Fla. 1972), aff 'd, 479 F.2d 1338, 178 USPQ 577 (5th Cir. 1973), cert. denied, 414 U.S. 874 (1974). But cf. Molins PLC v. Textron Inc., 48 F.3d 1172, 33 USPQ2d 1823 (Fed. Cir. 1995).

- 7. The Information Disclosure Statement filed on December 01, 2004 is identical to the Information Disclosure Statement filed on June 04, 2004. Accordingly, the references recited on the Information Disclosure Statement filed on December 01, 2004 have been lined through.
- 8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for

unpublished applications is available through Private PAIR only. For more information about

the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the

Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

April 04, 2005

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